BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF STARROW ENTERPRISES, Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB No. 86-26 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a Notice of Violation and civil penalty for $1,000 for allowing the emission of an objectionable odor from appellant's plant located at 4611 South 134th Place, in Seattle, Washington, on December 16, 1985, came on for hearing before the Pollution Control Hearings Board on March 10, 1986, in Seattle, Washington. Seated for and as the Board were Lawrence J. Faulk (presiding), Wick Dufford, and Gayle Rothrock. The proceedings were officially reported by Lisa Fletchner of Gene Barker & Associates. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant was represented by Floyd Darrow, owner of Starrow Enterprises. Respondent Agency was represented by its attorney Keith D. McGoffin.

Witnesses were sworn and testified. Exhibits were examined. From the testimony heard and exhibits examined, the Board makes these

FINDINGS OF FACT

I

Appellant Starrow Enterprises is a manufacturer of cultured marble and onyx products. In order to manufacture tnese products, the appellant mixes calcium carbonate with a resin and casts the mixture in molds. The product is then sealed with a Gel-Coat.

II

Respondent PSAPCA is a municipal corporation with the responsibility for conducting a program of air pollution prevention and control in a multi-county area which includes the site of appellant's plant.

PSAPCA, pursuant to RCW 43.21B.260 has filed with this Board a certified copy of its Regulation I (and all amendments thereto), which is noticed.

III

In the morning of December 16, 1985, PSAPCA received a complaint from a neighbor who lives and maintains a business across the street from appellant's plant, about 200 feet northwest of the discharge point for emissions from the Gel-Coat spray booth. Respondent Agency's inspector that morning visited and spoke with the

complainant and personally sniffed and detected a noticeable and distinct styrene (vinyl benzene) odor with unpleasant characteristics. He experienced nose and eye irritation and a burning sensation.

The complainants and others within the household found the odor highly objectionable. The complainant said when he first opened his door that morning the odor was so strong "you could cut it with a knife."

The inspector, during his visit, rated the odor as equivalent of a "2" on an odor rating scale ranging from 0 to 4, and delineated as illustrated:

0--No detectable odor

1--Odor barely detectable

2--Odor distinct and definite, any unpleasant characteristics recognizable

3--Odor strong enough to cause attempts at avoidance

4--Odor overpowering, intolerable for any appreciable time.

This rating scale is used by PSAPCA not as a regulatory standard, but as a shorthand method for preserving impressions for evidentiary purposes.

IV

On December 16, 1985, Notice of Violation (No. 021209) was issued to Starrow Enterprises for violating Section 9.11(a) of PSAPCA Regulation I.

V

On January 27, 1986, Notice and Order of Civil Penalty No. 6403 was sent to appellant assessing a penalty of $1,000 for allegedly violating PSAPCA Regulation, Section 9.11(a) and WAC 173-400-040(5) on December 16, 1985. From this, appellant appealed to this Board on February 7, 1986.

VI

The appellant's owner in this case does not contend that the effects experienced on the date in question did not occur. Mr. Darrow did attempt to illustrate that the complainant is a chronic complainer. However, both the complainant and PSAPCA's inspector possess a normal sense of smell, so far as the record shows.

VII

Appellant's owner testified that he has made a substantial effort to improve the filtering system for his Gel-coat spraying operations since the event in question.

At the end of December the company doubled the filtering, and are now using both metal and fiberglass filters. These filters are subjected to a regular weekly cleaning schedule. Mr. Darrow stated that he did not think there have been any odor problems since this new installation was made.

Nontheless, he said that he was exploring the installation of a more advanced system utilizing charcoal filters. He has been negotiating with a supplier, but has not ordered the system yet because to date he has been unable to obtain a guarantee of

performance.

VIII

The Board finds on the record before it, that the odors complained of emanated from appellant's plant and were, in fact, offensive to persons of normal sensitivity; and that they did, in fact, unreasonably interfere with the enjoyment of life, and property on the date involved here.

IX

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters Chapters 43.21 and 70.94 RCW.

II

Under terms of Section 9.11(a) of PSAPCA Regulation, certain air emissions are prohibited. This section reads as follows:

> (a) It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

WAC 173-400-040(5) is substantially to the same effect. This formulation parallels the definition of "air pollution" contained in the State Clean Air Act at RCW 70.94.030(2). The language is similar

to the traditional definition of a nuisance. See RCW 7.48.010.

III

On December 16, 1985, odors emanating from appellant's manufacturing plant wafted onto a nearby residence and had such effects on the enjoyment of life and property as to violate Section 9.11(a) of respondent's Regulation I, and WAC 173-400-040(5).

This event occurred before our prior decision in PCHB No. 85-160, 192, 228 (December 31, 1985), but after the hearing therein.

IV

PSAPCA's Regulation I and the Washington State Clean Air Act provide for a maximum civil penalty of $1,000 per day in occurences of this kind. The purpose of the civil penalty is not primarily punitive, but rather to influence behavior. The need to promote compliance among members of the public generally supports the imposition of a monetary sanction. However, if by suspending all or a portion of penalty, compliance can be achieved, then the objectives of the law will have been served. In this case, the appellant has modified his behavior and has revised his existing filtering system and instituted an effective maintenance program. Further, he is investigating a new charcoal filtering system that may be more effective than the present system. We note that these responsive actions occurred after our prior hearing relating to the same problem. We therefore conclude that the Order set forth below is appropriate.

V

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER

Notice and Order of Civil Penalty Number 6403 issued by PSAPCA is affirmed; provided however that $700 is suspended on condition that appellant satisfy PSAPCA on or before June 30, 1986, that it has in place an odor control system which meets the statutory formula of "all known available and reasonable means of emission control."

DONE this 22nd day of April, 1986.

POLLUTION CONTROL HEARINGS BOARD

4/22/86

LAWRENCE J. FAULK, Chairman

GAYLE ROTHROCK, Vice Chairman

WICK DUFFORD, Lawyer Member